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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 20 OF 2001

The Commissioner of Income Tax ... Appellant

Versus

Harsh Estate Pvt.Ltd. .. Respondent

Mr. B.M. Chatterjee with Ms. P.P. Bhosale for the Appellants.

Mr. F.V. Irani with Mr. a.k. Jasani for Respondent.

CORAM: F.I. REBELLO &
R.S.MOHITE, JJ.
DATED: DECEMBER 19, 2007

P.C.

. The Revenue has preferred this appeal against the common order passed in Appeal filed by the respondent before the Tribunal and two other appeals decided on 27.6.2000.

. This appeal pertains a company which was in thebusiness of purchase and sale of shares at the Stock Exchange.

. The Commissioner (Appeals) had recorded a finding that the company had purchased and sold 53 lac. units valued at Rs. 7 crores through a Broker and consequently it was not a speculative transaction as

the transaction has been accompanied by delivery of units. On this basis, that the sale price was considered as the turn over of the company and consequently the penalty imposed by the Assessing Officer was confirmed.

. In appeal the ITAT dealing with the issue of delivery of shares has recorded a finding as follows :

> " At this juncture, we may clarify that the Assessee never took delivery of the units as observed by the CIT (A). The Contract note clearly specifies the date of delivery as on 30.9.89. Even otherwise, there is no evidence to say that the assessee in fact obtained the delivery thereof. Thus the units contracted to be bought were future goods and were unascertained....."

. In other words the finding by the Commissioner (Appeals) that the purchase was coupled with delivery has been reversed by the order of the ITAT. Nothing has been brought to our attention from the record that the said finding of reversal is perverse warranting this court to take a view different from the view taken by the Tribunal. We therefore, proceed on the footing that though there was

transaction of shares it was not coupled with delivery. Once there was no delivery, the sale price of the shares could not have been considered as the turn over but only the difference between the price at which the shares were purchased and consequently sold by the broker.

. On behalf of the respondent, the learned counsel points out that they were under a bona fide belief that the transaction was speculative and the amount being less than 40 lacs, there was no requirement to file the returns. It is therefore, submitted that the setting aside of the order imposing penalty was even otherwise justified considering that the respondent was under the bona fide belief. It is also submitted that considering the tax incidence is less than Rs. 4 lacs. the Revenue ought not to have preferred the present appeal considering the circular issued by C.B.D.T.

. Considering the findings on merits namely that there was no delivery and consequently the sale prices of the shares could not have been considered, it is not necessary to go into the other aspects. In the light of the above, we find no merit in this appeal which is accordingly dismissed.

(R.S.MOHITE, J.) **(F.I.REBELLO, J.)**